UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	Judge Thomas J. Tucker

/

ORDER REGARDING FURTHER PROCEEDINGS ON THE CITY OF DETROIT'S OBJECTION TO CLAIM NO. 3232 OF STEVEN WOLAK, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER WOLAK, DECEASED

This case came before the Court for a hearing on November 16, 2016, on the claim objection entitled "City of Detroit's Objection to Claim No. 3232" (Docket # 11620, the "Claim Objection"). For the reasons stated by the Court on the record during the hearing,

IT IS ORDERED that:

1. The Court will hold a further, non-evidentiary hearing on the Claim Objection on **January 25, 2017 at 1:30 p.m.**

2. The claimant, Steven Wolak, as Personal Representative of the Estate of Christopher Wolak, Deceased ("Wolak"), may file a supplement in support of his response to the Claim Objection, in the form of a supplemental brief and exhibits containing any evidentiary materials (affidavits, documentary evidence), no later than December 16, 2016. Wolak's supplement must be limited to any argument(s) Wolak wishes to make as to why the pre-petition settlement agreement between Wolak and the City should be avoided rather than enforced (*e.g.*, an argument that Wolak was fraudulently induced by the City to enter into the settlement agreement).[1]

3. Karen Evangelista, the Chapter 7 Trustee in the pending bankruptcy case filed by Steven Wolak and Francine Wolak (Case No. 15-58342), may file a response to any supplement filed by Steven Wolak. The Chapter 7 Trustee's response must be filed no later than December 27, 2016.

4. The City of Detroit may file a response to the supplement filed by Steven Wolak, and to the Chapter 7 Trustee's response to that supplement, including any supplemental brief and any exhibits, no later than January 17, 2017.

[1] During the November 16, 2016 hearing, the Court made a partial ruling on the merits of the Claim Objection and Wolak's response to the Claim Objection, by ruling that all of Wolak's arguments made in response to the Claim Objection that are premised upon enforcement of the settlement agreement, rather than avoidance of it, are without merit and are overruled.

As promised during the November 16, 2016 hearing, the Court attaches to this Order, for reference by the parties, excerpts from the transcript of the Court's April 29, 2015 bench opinion given in the case of *Collins v. Deshikachar*, Adv. No. 14-4318 (Docket # 133), relating to principles regarding enforcement and interpretation of settlement agreements, and possible grounds for avoiding enforcement of a settlement agreement, under Michigan law.

Signed on November 18, 2016

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOYCE COLLINS,

Plaintiff,

v.

VASAN DESHIKACHAR,

Defendant.
_____/

Adv. Case No. 14-04318-tjt

Detroit, Michigan
April 29, 2015

PLAINTIFF'S MOTION TO ENFORCE
BEFORE THE HONORABLE THOMAS J. TUCKER
TRANSCRIPT ORDERED BY: KEITH FLYNN

APPEARANCES:

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Court Recorder: MS. JAMIE LASKASKA

Transcribed By: MS. KRISTEN SHANKLETON

Proceedings recorded by electronic sound recording.
Transcript prepared by transcription service

The Plaintiff contends that the -- there is a valid enforceable settlement agreement, which this Court should enforce, between the Plaintiff and the Defendant, which the material terms of which are all stated, according to Plaintiff, in the terms sheet, Docket 83, Exhibit B.

The Defendant disagrees with that argument and disputes that. And there are a number of issues to be discussed on that with respect to that dispute between these parties.

The -- I'm going to talk a little bit about the law that applies to the issues at hand with respect to this motion and the dispute between the parties reading this motion.

First of all, some general principles that apply here. As stated by the United States District Court for this District in the 2010 decision of McCormick v. Brzezinski, B-r-z-e-z-i-n-s-k-i, a decision of the District Court for this District from April 13, 2010 that is reported at 2010 WL 1463176, the Court stated the following principles, all of which I agree with and apply to this case regarding enforcement of settlement agreements. First the Court said:

> "It is well established that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them."

And by the way, in quoting from this opinion and other opinions, I'm omitting citations. There are numerous citations to case laws cited in these opinions that I'm going to be quoting from supporting the propositions stated.

The Court went on in the McCormick case to say that, and this is at West Law page 2, by the way, all of this, the Court went on to say that, quote:

> "The district court's power to summarily enforce settlements extends to cases where the parties have not reduced their agreements to writing. This inherent power derives from 'the policy favoring the settlement of disputes and the avoidance of costly and time-consuming litigation.'"

A little later on page 2 in the McCormick opinion, the District Court stated, quote:

> "'To enforce a settlement, a district court must conclude that agreement has been reached on all material terms. [W]hether [a settlement agreement] is a valid contract between the parties is determined by reference to state substantive law governing contracts generally.' Thus, the court will apply Michigan contract law to determine whether a valid settlement agreement was reached."

A little later in the opinion the Court went on to

say the following, quote:

"Under Michigan law, in order to form a valid contract, there must be a meeting of the minds, or mutual assent, with respect to all material terms of the contract. Further, '[a] meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind.'"

Again, that's from West Law page 2 of the McCormick opinion.

A further statement of some general principles that apply here was stated by the Michigan Court of Appeals in the case of Dezaak, D-e-z-a-a-k, Management, Inc. v. Auto Owners Insurance Company, reported at 2012 WL 5258304, a decision of the Michigan Court of Appeals from October 23, 2012. At West Law page 2 the Michigan Court of Appeals stated the following propositions of Michigan law, quote:

"An agreement between parties to settle a pending lawsuit constitutes a contract and is governed by the legal principles that are applicable to the interpretation of contracts. Unambiguous agreements must be enforced according to their plain terms. In the absence of duress, fraud, mutual mistake, severe stress, or unconscionable advantage taken by one party over the opposing party, courts are bound to enforce

settlement agreements." Unquote.

And again, I'm omitting citations to authorities that appear in the Michigan Court of Appeals opinion when I'm quoting from it.

A little bit later in the opinion, still at West Law page 2, the Michigan Court of Appeals went on to say, quote:

> "[S]ettlement agreements should not normally be set aside and...once a settlement agreement is reached a party cannot disavow it merely because he has had a 'change of heart.'" Unquote.

Next, I want to note a holding of the Michigan Court of Appeals in the case of Shuster, S-h-u-s-t-e-r, v. Daimler Chrysler Corporation, a decision from March 1, 2005 in the Michigan Court of Appeals, which is reported at 2005 WL 474009, and this is from West Law page 1 of the Court's opinion. There the Michigan Court of Appeals said, quote:

> "An agreement to settle a pending lawsuit is a contract governed by the legal principles applicable to the construction and interpretation of contracts. There must be a meeting of the minds, i.e. mutual assent, on all the material facts in order to form a valid agreement, and whether such a meeting of the minds occurred is judged by an objective, rather than subjective, standard, looking to the express words of

the parties and their visible acts." Unquote.

Similar principles were stated and held to apply to request to enforce the settlement agreement by the United States Court of Appeals for the Sixth Circuit in three cases that I will cite, and the first of those is, and these were all cited in the Plaintiff's brief, by the way, the first of which is Re/Max International, Inc. v. Realty One, Inc., a Sixth Circuit decision from 2001 reported at 271 F.3d 633. In there the Sixth Circuit noted the following at pages 645, 646, and again I'm omitting citations. Quote:

> "Before enforcing a settlement, a district court must conclude that agreement has been reached on all material terms."

The Court went on to say a little bit later at page 646 that, quote:

> "No evidentiary hearing is required where an agreement is clear and unambiguous and no issue of fact is present. Thus, summary enforcement of a settlement agreement has been deemed appropriate where no substantial dispute exists regarding the entry into and terms of an agreement." Unquote.

A little bit later on page 646, the Sixth Circuit went on to say, quote:

> "The existence of a valid agreement is not

diminished by the fact that the parties have yet to memorialize the agreement. When parties have agreed on the essential terms of a settlement, and all that remains is to memorialize the agreement in writing, the parties are bound by the terms of the oral agreement."

The Sixth Circuit held these same things in the case of Michigan Regional Council of Carpenters v. New Century Bancorp, Inc., reported at 99 Fed.Appx 15 2004 WL 771255. The United States Court of Appeals for the Sixth Circuit decision from April 8, 2004, in particular at West Law pages 7 and 8.

And finally the Sixth Circuit, I would cite the Sixth Circuit case of Brock v. Scheuner, S-c-h-e-u-n-e-r, Corporation, 841 F.2d 151 at page 154, a Sixth Circuit decision from 1988 in which the Sixth Circuit held as follows, and again, I'm omitting citations. This is at page 154. Quote:

"It is well established that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them. A federal court possesses this power 'even if that agreement has not been reduced to writing.' Before enforcing settlement, the district court must conclude that agreement has been reached on all material terms.

The court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement." Unquote.

Now, in this case, the terms sheet, what I've been referring to as the terms sheet, that was signed by the Plaintiff and the Defendant on January 30, on its face is complete. It contains all the material terms of the parties' agreement to settle this adversary proceeding, such that in the Court's view there can be no genuine dispute that the terms sheet. The terms stated in the terms sheet constitute an enforceable settlement agreement between the parties as a written signed agreement containing all the material terms of the parties' agreed settlement, unless one of the defenses, arguments in the nature of a defense that the Defendant has made, such as duress or mistake of fact, which I'll talk about a little bit more in a minute, has been -- is demonstrated.

The Defendant's arguments that the terms sheet does not contain all the material or essential elements, material elements of the settlement of a settlement between the parties, which the Defendant's counsel has -- has stated today essentially as an argument that the terms sheet contains some of the terms but not all the material terms of the settlement, is in my view without merit as a matter of law based on the undisputed facts and the content

amount to or demonstrate, even if accepted as true, any proper or valid defense to against enforcement of the settlement agreement that I have found was made by the parties in the terms sheet.

As I noted earlier in quoting from the Michigan Court of Appeals decision in Dezaak Management v. Auto Owners Insurance Company case, under Michigan law:

> "A settlement agreement must be enforced in the absence of duress, fraud, mutual mistake, severe stress, or unconscionable advantage taken by one party over the opposing party."

Absent those things, courts are bound to enforce settlement agreements between the parties.

With respect to this concept of unconscionability, I want to talk about that first. Unconscionable advantage taken by one party over the opposing party, that's one of the exceptions in the Dezaak Management case. Michigan law makes clear that unconscionability is something far more severe than what has been alleged, the facts that have been alleged by the Defendant here.

In the case of Majestic Golf, LLC v. Lake Walden Country Club, Inc., a Michigan Court of Appeals decision from 2012, reported at 823 N.W.2d. at page 610, which I'll note for the record was reversed on other grounds other than the ones I'm relying on here by this Michigan Supreme

Court in 2013 at 840 N.W.2d. 305, the Michigan Court of Appeals said at page 623, that is 823 N.W.2d. at page 623 regarding unconscionability, the following, quote:

> "[i]n order for a contract or contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present."

I'm omitting citations here. The Court goes on to quote a case, an earlier Michigan Court of Appeals case, Clark v. DaimlerChrysler Corp., as saying the following, quote:

> "Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term. If, under a fair appraisal of the circumstances, the weaker party was free to accept or reject the term, there was no procedural unconscionability. Substantive unconscionability exists where the challenged term is not substantively reasonable. However, a contract or contract provision is not invariably substantively unconscionable simply because it is foolish for one party and very advantageous to the other. Instead, a term is substantively unreasonable where the inequity of the term is so extreme as to shock the conscience." Unquote.

The facts alleged by the Defendant including what

he has alleged and argued regarding his IRS debt potentially impairing his ability to pay settlement terms, if true might show that the Defendant -- the Defendant was guilty of perhaps even of being foolish in agreeing to the payment terms if he thought the IRS was going to prevent him from making the payments required by the settlement here with Ms. Collins, but it does not amount to unconscionability as defined by Michigan law in this case I've just quoted from.

There's no procedural unconscionability because Mr. Deshikachar, the Defendant, was free to reject the terms of this settlement terms sheet and not agree to them and not sign the settlement terms sheet and, in fact, refused to agree to any settlement because of his concern if he had it at the time about the Internal Revenue Service debt or for any other reason. So there was no procedural unconscionability here; that's clear. And the facts he's alleged do not show otherwise, even accepted as true and admissible.

Further, there's no substantive unconscionability because the terms of this terms sheet that the Defendant agreed to and signed, this settlement, were not such as to be inequitable in such an extreme as to shock the conscience. So there is no unconscionability on the facts, even if we accept as true and admissible all of the facts

alleged by the Defendant here in opposing this motion to enforce the settlement as that term is defined by Michigan law.

With respect to the argument, and this is a similar argument, the argument the Defendant has made that the settlement agreement should not be enforced because the Defendant was subject to duress or coercion that led him to sign that terms sheet and agree to that, those terms, when Michigan case law refers to duress or coercion, in order to show duress or coercion as the Dezaak case that I cited earlier, Dezaak Management, Inc. v. Auto Owners Insurance Company, Michigan Court of Appeals decision says, and this is at 2012 WL 5258304 at WL page 2, footnote 1, the Court there says, quote:

> "A settlement agreement generally cannot be set aside on the basis of a unilateral mistake."

And I'll talk about mistake a little bit more.

And then the Court says, quote:

> "To establish a claim of duress, a party must show that he or she was illegally compelled or coerced to engage in an act under fear of serious injury to his or her person, reputation, or fortune." Unquote.

And I'm omitting citations here. Certainly duress as defined by the Michigan Courts in the Dezaak case is not shown under the facts alleged, even if all facts alleged by

the Defendant are accepted as true and admissible and admitted into evidence.

The U.S. District Court in the McCormick case that I cited earlier similarly talks about duress and coercion under Michigan law, and this is at 2010 WL 1463176 at WL page 4, and I'm omitting citations. The Court says the following, quote:

> "Courts generally agree that to prove duress, a party must show 'first, that one side involuntarily accepted the terms of another; second, that circumstances permitted no other alternative; and third, that the opposite party's coercive acts caused those circumstances.' Specifically, under Michigan law, the touchstone of coercion and duress is that the victim is deprived of his or her 'unfettered will.'" Unquote.

Defendant has presented and alleged no facts that would show duress or coercion under this definition. It's clear and it's undisputed and it's admitted in the hearing today by the Defendant's counsel on behalf of the Defendant, the Defendant was free and had freedom here to refuse to agree to any settlement or to the particular settlement terms that he signed off on in signing the terms sheet at issue. He was free not to agree to those things, but he agreed to them and signed the terms sheet anyway,

and he was not coerced or guilty -- or the victim of duress as those terms are defined by Michigan law in the McCormick case and under the Dezaak case that I have quoted from.

In the, applying Michigan law in discussing duress in this kind of context, the U.S. District Court for the Eastern District of Michigan in a 1991 case, Cochran, C-o-c-h-r-a-n v. Ernst & Young, 758 F.Supp. 1548 at page 1556, the District Court stated that in the absence of physical intimidation or coercion there can only be a claim of economic duress, and that concept is defined this way, quote:

> "Fear of financial ruin or economic hardship, alone, is not a legally sufficient basis for claiming coercion or economic duress. To maintain a claim of economic duress or coercion in Michigan, serious financial harm must be threatened, and the person allegedly applying the coercion must act unlawfully."

There's no allegation of any unlawful actions or -- by any participant in the mediation made against the Defendant here, nor do the facts amount to, even if accepted as true, amount to any sort of threat that's -- could be considered by any stretch of the imagination to be duress or coercion that would permit the Defendant to avoid an enforcement of the settlement agreement here.

Similar authority for this concept is the Michigan

Supreme Court's decision from 1963 in the Beachlawn Building Corporation v. City of St. Clair Shores case, reported at 121 N.W.2d 427 at page 429 to 430 where the Court said, quote:

"Duress exists when one by the unlawful act of another is induced to make a contract or perform such act under circumstances which deprive him of the exercise of free will." Unquote.

Such an extreme situation clearly is not demonstrated by the facts even as alleged by the Defendant here in this case.

With respect to mistake, whether the Defendant's argument is properly characterized as Defendant does in the brief at Docket 91 as mistake of fact, or as Plaintiff's counsel argued in today's hearing mistake of law, in either case under the facts alleged by the Defendant as a matter of law, there was no -- there was no mistake, mutual mistake that would justify the Court's refusing to enforce this settlement agreement.

As the Michigan Court of Appeals in the Dezaak Management case that I've quoted from earlier, stated, and this is 2012 WL 5258304 at West Law page 2, footnote 1, the Michigan Court of Appeals said that, quoting:

" A mutual mistake may be one of fact or one of law. A mutual mistake of fact means 'an erroneous belief,

which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.' A settlement agreement generally cannot be set aside on the basis of a unilateral mistake."

That's in footnote 1, and further on West Law at page 3 in that opinion, the Michigan Court of Appeals went on to say, quote:

> "We will not find duress or undue influence where a trial court has voiced its position on a legal issue during trial that strongly motivates, or even pressures, a party to settle an action; this is not an uncommon occurrence." Unquote.

Similarly, any pressure applied by the mediator in a mediation session, like the mediation in this case, even if it were admissible in evidence that that had occurred, would not be considered duress or undue influence, nor is there any showing under the facts alleged by the Defendant that there was a mutual mistake of fact that the Plaintiff and the Defendant shared and both relied on a mistake, mutual mistake of fact, nor a mistake of law in agreeing to the settlement that they agreed to.

In addition, under Michigan law, if there had been a mutual mistake of fact or law, that mistake would have to be material in order to provide a defense to enforcement of a settlement agreement. The Michigan Court of Appeals held

in the Shuster v. Daimler Chrysler Corp. case that I cited earlier, and this is 2005 WL 474009, at West Law page 2, the Court held that:

> "To establish a mutual mistake of fact, a plaintiff must show that both parties were mistaken concerning an existing fact that was material to the agreement." Unquote.

The Court in that case also held, by the way, that mistake of law as opposed to a mistake of fact, does not justify relief from a contract.

So, the Defendant's alleged -- facts alleged and arguments here do not amount, as a matter of law, even if accepted and could be considered by the Court, and all the facts alleged by the Defendant could be considered by the Court and deemed as true, do not amount, as a matter of law, do not amount to any of the types of concepts or defenses that might permit the Defendant to escape enforcement of the settlement agreement that he made with the Plaintiff. That is, there was no duress, coercion, mutual mistake of fact or law, mutual; no unconscionability; and nor was there any fraud or material misrepresentation or undue stress or pressure placed upon the Defendant alleged here.

Defendant was free to refuse to accept the settlement on the terms agreed to, that he ultimately

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Kristen Shankleton, CER-6785 Dated: 06/16/15

Jamie Laskaska